

805 KAR 11:010. Requirements for application for certification of drug-free workplace.

RELATES TO: KRS 351.186

STATUTORY AUTHORITY: KRS 351.070(13), 351.186

NECESSITY, FUNCTION AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.186 authorizes the Office of Mine Safety and Licensing to certify drug-free workplace programs implemented by an employer who is also a licensee, for the employer licensee to be eligible to obtain a credit on the licensee's premium for workers' compensation insurance. This administrative regulation establishes the requirements for applications submitted to the Office of Mine Safety and Licensing for certification of a drug-free workplace program.

Section 1. Applicability. (1) This administrative regulation shall apply to an application for certification of a drug-free workplace program implemented by an employer who is also a licensee.

(2) Employer participation in the Drug-Free Workplace Program shall be voluntary.

(3) All drug or alcohol testing shall be conducted:

(a) In accordance with applicable federal and state requirements; and

(b) As required by this administrative regulation for participants in the Drug-Free Workplace Program.

Section 2. Application Requirements. Employers who desire a drug-free workplace certification pursuant to KRS 351.186 shall submit to the office a notarized initial and annual application in the form of an affidavit executed by the owner or chief executive officer of the licensee establishing that it provides a drug-free workplace by:

(1) Providing a copy of a statement to each employee at the mine and posting the statement in a prominent place at the mine. The statement shall:

(a) Notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of alcohol or a controlled or illicit substance is prohibited in the mine; and

(b) Specify the actions that will be taken against employees for violations of the prohibition;

(2) Establishing an alcohol and substance abuse education and awareness training program which complies with the minimum requirements of 805 KAR 11:020, Section 2(1), to inform employees and supervisory personnel about:

(a) The dangers of drug abuse in the workplace;

(b) The role of co-workers and supervisors in addressing alcohol or drug abuse;

(c) The licensee's policy of maintaining a drug-free workplace;

(d) Available drug counseling, rehabilitation, and employee assistance programs; and

(e) The penalties for violations of the drug-free workplace policy;

(3) Establishing a program that includes alcohol and drug testing performed as established in 805 KAR 11:020, Section 2(2) through (6);

(4) Providing an Employee Assistance Program which shall:

(a) Include:

1. Professional assessment of employee personal concerns;

2. Confidential and timely services to identify employee drug or alcohol abuse;

3. Referrals of employees for appropriate diagnosis, treatment, and assistance with regard to employee alcohol or substance abuse; and

4. Follow-up services for employees who participate in a drug or alcohol rehabilitation program and are recommended for monitoring after returning to work; and

- (b) Provide services regardless of race, color, religion, national origin, disability, sex, or age
- (5) Verifying that the frequency and duration of each employee and supervisor training session meets the requirements of 805 KAR 11:020, Section 2(1)(b) and (c);
- (6) Verifying that all employees have participated, or will participate during the calendar year, in the required alcohol and substance abuse education and awareness training sessions;
- (7) Maintaining a drug-free workplace throughout its workers' compensation insurance policy period; and
- (8) Maintaining the drug-free workplace program in compliance with all applicable federal and state laws and regulations.
- (9) Requiring that all independent contractors who are required to be certified pursuant to KRS 351.102 shall comply with the provisions of the licensee's Drug-Free Workplace Program.

Section 3. Documents to be Attached. The application shall be accompanied by copies of the following documents:

- (1) The licensee's written drug-free workplace policy;
- (2) A statement identifying each alcohol and drug test that will be conducted;
- (3) A statement describing the licensee's Employee Assistance Program;
- (4) A description of the alcohol and substance abuse education and awareness training program for employees and supervisory personnel; and
- (5) A statement describing the confidentiality of the licensee's drug-free workplace program.

Section 4. Application Completeness. (1) The office shall reject an application for certification of a drug-free workplace program which fails to comply with any of the criteria listed in Section 2 or 3 of this administrative regulation.

(2)(a) The office shall notify the licensee of rejection of the application in writing, stating the specific reasons for the rejection.

(b) The notification shall be mailed certified mail, return receipt requested, to the address listed on the licensee's most recent mine license or mine license application.

(c) Service by certified mail shall be complete:

- 1. Upon delivery of the notification;
- 2. Upon acceptance by any person eighteen (18) years or older at the licensee address;
- 3. Upon refusal to accept by a person at the licensee address;
- 4. Upon the U.S. Postal Service's inability to deliver the notification if properly addressed; or
- 5. Upon failure of the applicant to claim the notification prior to its return to the office by the U.S. Postal Service.

(d) The return receipt or envelope shall be proof of acceptance, refusal, inability to deliver, or failure to claim the envelope.

(3) The licensee may appeal the rejection as established in 825 KAR 1:020, Section 4.

Section 5. Incorporation by Reference. (1) "Mine License Applicant's Affidavit: Drug-Free Workplace Program", 2007 edition, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Mine Safety and Licensing, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. (33 Ky.R. 3128; Am. 3417; 34 Ky.R. 250; eff. 8-23-07; TAm eff. 7-6-2016.)